

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Authorize Release of the Private Road Maintenance Agreement and Standby Letter of Credit for Markham Woods Enclave

DEPARTMENT: Planning and Development **DIVISION:** Development Review

AUTHORIZED BY: Dori DeBord

CONTACT: Lee Shaffer

EXT: 7346

MOTION/RECOMMENDATION:

Authorize the release of the Markham Woods Enclave Private Road Maintenance Agreement and Standby Letter of Credit #31-9949 in the amount of \$26,460.75 for the Markham Woods Enclave road improvements.

District 5 Brenda Carey

Lee Shaffer

BACKGROUND:

Section 35.44 (e) of the Seminole County Land Development Code, concerning Additional Required Legal Submittals, required the Markham Woods Enclave project to have a Private Road Maintenance Agreement and Standby Letter of Credit, specifically, Maintenance Agreement and Standby Letter of Credit #13-9949 for \$26,460.75 (Colonial Bank, N.A.), to insure against any significant degradation in operating conditions resulting from any defective work covered by this bond. Staff conducted a two year maintenance inspection for this project located at 5400 Markham Woods Road and determined the improvements to be satisfactory.

STAFF RECOMMENDATION:

Staff recommends that the Board authorize the release of the Markham Woods Enclave Maintenance Agreement and Standby Letter of Credit #13-9949 in the amount of \$26,460.75 for the Markham Woods Enclave road improvements.

ATTACHMENTS:

1. Private Road Maintenance Agreement
2. Standby Letter of Credit
3. HOA Notification Response

Additionally Reviewed By:

☒ County Attorney Review (Kathleen Furey-Tran)

SUBDIVISION AND SITE PLAN

PRIVATE ROAD MAINTENANCE AGREEMENT
(For use with Letter of Credit)

THIS AGREEMENT is made and entered into this JULY day of 03, 2007, between KING BUILDERS, LLC hereinafter referred to as "PRINCIPAL" and the MARKHAM WOODS ENCLAVE Homeowner's Association of MARKHAM WOODS ENCLAVE subdivision (hereinafter referred to as the "BENEFICIARY") or, if none, SEMINOLE COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the "HOLDER"), on behalf of all purchasers of lots within MARKHAM WOODS ENCLAVE subdivision.

W I T N E S S E T H:

WHEREAS, PRINCIPAL has constructed certain road improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as MARKHAM WOODS ENCLAVE, a Plat of which is recorded in Plat Book _____ Pages _____, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain plans and specifications dated AUGUST 2004, (as subsequently revised or amended) and filed with the BENEFICIARY or the HOLDER, as the case may be; and

WHEREAS, PRINCIPAL is obligated to protect the BENEFICIARY against any defects resulting from faulty materials or workmanship of said road improvements and to maintain said road improvements for a period of two (2) years from JULY 03, 2007; and

WHEREAS, to guarantee performance of said obligations by PRINCIPAL, PRINCIPAL has obtained and furnished to the BENEFICIARY or to the HOLDER on behalf of the owners of lots within the subdivision (hereinafter referred to as LOT OWNERS) a certain Irrevocable Letter of Credit No. 31-9949 issued by COLONIAL BANK, in the sum of TWENTY-SIX THOUSAND, FOUR HUNDRED SIXTY DOLLARS 75 CENTS DOLLARS (\$26,460.75).

NOW THEREFORE, the BENEFICIARY or the HOLDER on behalf of the LOT OWNERS, agrees to accept an Irrevocable Letter of Credit as security for the maintenance obligation of the PRINCIPAL.

PRINCIPAL, its heirs, executors, successors and assigns, jointly and severally agrees to be held and firmly bound to the BENEFICIARY or to the HOLDER on behalf of the LOT OWNERS in the sum of TWENTY-SIX THOUSAND, FOUR HUNDRED SIXTY DOLLARS 75 CENTS DOLLARS (\$26,460.75) on the condition that, if PRINCIPAL shall promptly and faithfully protect the BENEFICIARY or LOT OWNERS against any defects resulting from faulty materials or workmanship of the aforesaid road improvements and maintain said road improvements for a period of two (2) years from JULY 03, 2007, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The BENEFICIARY/HOLDER, or LOT OWNER shall notify the PRINCIPAL in writing of any defect for which the PRINCIPAL is responsible and shall specify in said notice a reasonable period of time within which PRINCIPAL shall have to correct said defect.

Should the PRINCIPAL fail or refuse to perform or correct said defects within the time specified, the BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in MARKHAM WOODS ENCLAVE subdivision) shall be authorized, but shall not be obligated, to take over and perform, or cause to be performed, such work as shall be necessary to correct such defects, and shall be authorized to draw upon the Letter of Credit to pay the cost

thereof, including, but not limited to, engineering, legal and contingent costs. Further, the BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in MARKHAM WOODS ENCLAVE subdivision), in view of the public interest, health, safety, welfare and other factors involved, and the consideration in approving and filing the said Plat shall have the right to resort to any and all legal remedies against the PRINCIPAL, both at law and in equity, including specifically, specific performance, to which the PRINCIPAL unconditionally agrees.

The PRINCIPAL further agrees that the BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in MARKHAM WOODS ENCLAVE subdivision), at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to receipt of bids, cause to be corrected any defects or said defects in case the PRINCIPAL shall fail or refuse to do so, and, in the event the BENEFICIARY/LOT OWNERS should exercise and give effect to such right, the PRINCIPAL shall be obligated hereunder to reimburse the BENEFICIARY (which shall include, but not be limited to any individual lot owner in MARKHAM WOODS ENCLAVE subdivision) the total cost thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequent, which may be sustained on account of the failure of the PRINCIPAL to correct said defects.

[This Agreement and all rights hereunder may be assigned by the HOLDER to the Homeowner's Association of MARKHAM WOODS ENCLAVE subdivision or to the individual lot owners of MARKHAM WOODS ENCLAVE subdivision as the case may be.]

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

BENEFICIARY:

ATTEST/WITNESSES:

Tracey Havens
Tracey Havens
Natalia Hayhurst
NATALIA HAYHURST

By: _____

Date: _____

PRINCIPAL:

Signed, sealed and delivered
in the presence of:

Tracey Havens
Tracey Havens
Natalia Hayhurst
NATALIA HAYHURST

KING BUILDERS, LLC

By: Rex Crane
REX CRANE

Date: _____

HOLDER:

DEPARTMENT OF PUBLIC WORKS
ROADS DIVISION
SEMINOLE COUNTY, FLORIDA

Albert English

Albert English, Manager Roads/Stormwater

Date: 12-20-07

Within authority delegated by the County Manager pursuant to Resolution No. 97-R-66 adopted March 11, 1997 and further delegated by Memorandum dated March 27, 1997, Re: Streamling of Development-Related Agenda Items and approved on April 2, 1997.

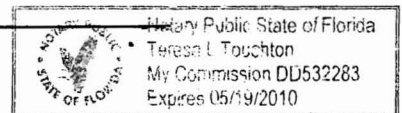
STATE OF Florida)
COUNTY OF Seminole) ss

The foregoing instrument was acknowledged before me this 20 day of December, 2007, by Albert English, who is personally known to me or who has produced _____ as identification.

Teresa L. Touchton
Print Name Teresa L Touchton
Notary Public in and for the County
and State Aforementioned

My commission expires: _____

P:\USERS\ROGER\FRM\LDCH105
Rev. 05/30/97



STANDBY LETTER OF CREDIT		PAGE 1
PLACE OF ISSUE : SUNRISE DATE OF ISSUE : JULY 03, 2007	IRREVOCABLE STANDBY LETTER OF CREDIT	NUMBER 31 9949
ADVISED BY MAIL	DATE AND PLACE OF EXPIRY JULY 03, 2009 SUNRISE, FLORIDA	
APPLICANT KING BUILDERS, LLC. 3359 HORSESHOE BEND COURT LONGWOOD, FL 32779	BENEFICIARY SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS 1101 EAST FIRST STREET SANFORD, FLORIDA 32771	
ADVISING BANK NOT APPLICABLE	AMOUNT USD26,460.75 U.S. DOLLARS TWENTY SIX THOUSAND FOUR HUNDRED SIXTY AND CENTS SEVENTY FIVE ONLY	
	CREDIT AVAILABLE WITH COLONIAL BANK, N.A. BY PAYMENT AGAINST PRESENTATION OF THE DOCUMENTS DETAILED HEREIN	

IRREVOCABLE LETTER OF CREDIT
FOR PRIVATE ROAD MAINTENANCE AGREEMENT

DEAR COMMISSIONERS:

BY ORDER OF KING BUILDERS, LLC., WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON COLONIAL BANK, N.A., 1580 SAWGRASS CORPORATE PARKWAY, SUITE 310, SUNRISE, FL 33323 UP TO AN AGGREGATE AMOUNT OF UNITED STATES DOLLARS TWENTY SIX THOUSAND FOUR HUNDRED SIXTY AND 75/100 (US\$26,460.75) AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT OF THE BOARD OF COUNTY COMMISSIONERS THAT THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JULY 3, 2007, BETWEEN KING BUILDERS, LLC AND SEMINOLE COUNTY IS IN DEFAULT.

DRAFTS MUST BE DRAWN AND NEGOTIATED ON OR BEFORE JULY 3, 2009, AND EACH DRAFT MUST STATE THAT IT IS DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 31-9949 OF COLONIAL BANK, N.A. DATED JULY 3, 2007, AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT. THE BANK AGREES THAT THIS LETTER OF CREDIT SHALL AUTOMATICALLY RENEW ITSELF FOR SUCCESSIVE ONE-YEAR PERIODS UNLESS THE BANK SHALL GIVE NOTICE TO YOU NO LATER THAN FORTY-FIVE (45) DAYS PRECEDING AN EXPIRATION DATE THAT IT CHOOSES NOT TO RENEW THE LETTER OF CREDIT, IN WHICH CASE, THE COUNTY SHALL BE ENTITLED TO DEMAND AND RECEIVE THE OUTSTANDING AMOUNT OF MONEY REPRESENTED BY THIS LETTER OF CREDIT. IN THE EVENT A DRAW BASED ON EXPIRATION OF

THE SUM 26,460.75*

STANDBY LETTER OF CREDIT		PAGE 2
PLACE OF ISSUE : SUNRISE DATE OF ISSUE : JULY 03, 2007	CONTINUATION OF STANDBY LETTER OF CREDIT	NUMBER 31 9949
ADVISED BY MAIL	DATE AND PLACE OF EXPIRY JULY 03, 2009 SUNRISE, FLORIDA	
APPLICANT KING BUILDERS, LLC. 3359 HORSESHOE BEND COURT LONGWOOD, FL 32779	BENEFICIARY SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS 1101 EAST FIRST STREET SANFORD, FLORIDA 32771	

THIS LETTER OF CREDIT THE PROCEEDS SHALL BE HELD BY SEMINOLE COUNTY AS A CASH BOND TO SECURE CONTINUED ADHERENCE TO THE TERMS OF THE PRIVATE ROAD MAINTENANCE AGREEMENT WITH KING BUILDERS, LLC.

UPON TENDER OF PAYMENT, YOU WILL RELEASE TO THE BANK THE ORIGINAL IRREVOCABLE LETTER OF CREDIT MARKED "CANCELLED". IN ANY EVENT, UPON EXPIRATION OF THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JULY 3, 2007, AND THE COMPLETION OF KING BUILDERS, LLC'S OBLIGATIONS THEREUNDER, YOU WILL RETURN THE ORIGINAL LETTER OF CREDIT TO THIS BANK MARKED "CANCELLED."

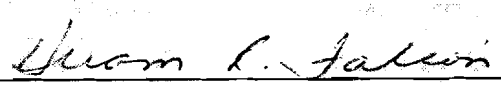
WE HEREBY ENGAGE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO COLONIAL BANK, N.A.

IF THE BOARD OF COUNTY COMMISSIONERS INITIATES SUIT UNDER THIS LETTER OF CREDIT, THE BANK HEREBY AGREES TO BE RESPONSIBLE FOR SEMINOLE COUNTY'S COURT COSTS AND REASONABLE ATTORNEY'S FEES, BUT COLONIAL BANK, N.A., SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEY'S FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT, IN ANY WAY, BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THE PERFORMANCE AND PAYMENT AGREEMENT DATED JULY 3, 2007 AS REFERENCED HEREIN.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 ("ISP98"), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 590.

***** END OF CREDIT *****

STANDBY LETTER OF CREDIT		PAGE 3
PLACE OF ISSUE : SUNRISE DATE OF ISSUE : JULY 03, 2007	CONTINUATION OF STANDBY LETTER OF CREDIT	NUMBER 31 9949
ADVISED BY MAIL	DATE AND PLACE OF EXPIRY JULY 03, 2009 SUNRISE, FLORIDA	
APPLICANT KING BUILDERS, LLC. 3359 HORSESHOE BEND COURT LONGWOOD, FL 32779	BENEFICIARY SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS 1101 EAST FIRST STREET SANFORD, FLORIDA 32771	
THIS AREA INTENTIONALLY BLANK		
THIS DOCUMENT CONSISTS OF 3 PAGES FOR AND ON BEHALF OF COLONIAL BANK, N.A.		
 AUTHORIZED SIGNATURE(S)		

Harbin, BeJay

From: Rex Crane [rexcrane@earthlink.net]
Sent: Tuesday, May 19, 2009 10:22 AM
To: Harbin, BeJay
Subject: Markham Woods Enclave subdivision

Please be advised that Markham Woods Enclave Owners Association, Inc. has no objection to the release of the warranty bond or bonds (or Letters of Credit) being held by Seminole County on King Builders, LLC. on the Markham Woods Enclave subdivision.

All their work and the resulting infrastructure are satisfactory to our HOA.

Thank you for your consideration.

Rex Crane
President
Markham Woods Enclave Owners Association, Inc.
3359 Horseshoe Bend Ct.
Longwood, Florida 32779